

EX PARTE OR LATE FILED

PEPPER & CORAZZINI
L. L. P.

ATTORNEYS AT LAW
1776 K STREET, NORTHWEST, SUITE 200
WASHINGTON, D. C. 20006
(202) 296-0600

VINCENT A. PEPPER
ROBERT F. CORAZZINI
PETER GUTMANN
JOHN F. GARZIGLIA
NEAL J. FRIEDMAN
ELLEN S. MANDELL
HOWARD J. BARR
MICHAEL J. LEHMKUHL *
SUZANNE C. SPINK *
RONALD G. LONDON *
MICHAEL H. SHACTER
* NOT ADMITTED IN D. C.

GREGG P. SKALL
E. THEODORE MALLYCK
OF COUNSEL
FREDERICK W. FORD
1909-1986

TELECOPIER (202) 296-5572
INTERNET PEPCOR@COMMLAW.COM
WEB SITE HTTP://WWW.COMMLAW.COM

January 27, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

RECEIVED

JAN 27 1997

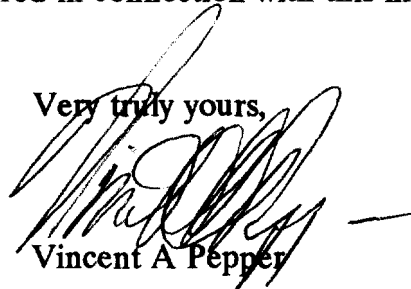
Re: MM Docket No. 87-268
Advanced Television Systems

Dear Mr. Caton:

Transmitted herewith on behalf of WEAU License, Inc., the licensee of Television Station WEAU-TV, Eau Claire, Wisconsin, are an original and nine (9) copies of its Opposition to Reply Comments and Request for Change of DTV Allotment for Station WEAU-TV to Avoid Interference, being filed in opposition to the January 9, 1997 Reply Comments filed on behalf of Shockley Communications Corporation, the licensee of Television Station WQOW-TV, Eau Claire, Wisconsin.

Should any further information be desired in connection with this matter, please communicate with this office.

Very truly yours,


Vincent A. Pepper

Enclosure

No. of Copies rec'd 019
List ABCDE

RECEIVED

JAN 27 1997

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter Of

**Advanced Television Systems
and Their Impact Upon the
Existing Television Broadcast
Service**

)
)
)
)
)
)

MM Docket No. 87-268

To: The Commission

**OPPOSITION TO REPLY COMMENTS AND
REQUEST FOR CHANGE OF DTV ALLOTMENT FOR
STATION WEAU-TV TO AVOID INTERFERENCE**

Comes now WEAU License, Inc., the licensee of Television Station WEAU-TV Eau Claire, Wisconsin, by its attorneys, and respectfully submits its Opposition to the request filed on January 9, 1997 by Shockley Communications Corporation, the licensee of Television Station WQOW-TV, Eau Claire, Wisconsin, requesting that the digital channel allocation for WEAU-TV be changed from Channel 16 to Channel 39. In support whereof the following is shown:

1. WEAU License, Inc., a wholly-owned subsidiary of Busse Broadcasting Corp., is the licensee of Television Station WEAU-TV authorized by the Commission to operate on Channel 13 with an effective radiated power of 316 kW at a height above average terrain of 1,990 feet in Eau Claire, Wisconsin. WEAU-TV has been serving the people of the Eau Claire market as a full service television station since 1953 and currently is the NBC affiliate for the market.

2. WQOW-TV, licensed to Shockley Communications Corporation, is authorized to operate on Channel 18 in Eau Claire, Wisconsin with an effective radiated

power of 1,150 kW at a height above average terrain of 740 feet. WQOW-TV has been in operation since 1980 and currently is a satellite station of WXOW-TV, the Shockley station in LaCrosse, Wisconsin, the ABC affiliate for that market.

3. In its Petition, Shockley submits Exhibits 3 and 4 reporting to reflect an interference area to WQOW-TV NTSC 18 and WQOW-TV DTV 14. First, it should be noticed that both the Commission and the Broadcaster's Caucus in proposing to allocate DTV Channel 16 to WEAU-TV and DTV Channel 14 to WQOW-TV recognized that there would be a reduction of 4.3% (Broadcaster's Caucus) or 3.7% (Commission) to the NTSC service area of WQOW-TV due to interference from DTV assignments. The Commission and the Broadcaster's Caucus also recognized that the population within the new NTSC interference area amounted to 3.2% (Broadcaster's Caucus) or 2.7% (Commission) of the population within the noise-limited area.

4. Both the Commission and the Broadcaster's Caucus recognized that there would be some interference situations, both digital to NTSC and digital to digital. In reviewing the Allocation Tables proposed by both the Commission and the Broadcaster's Caucus, the interference in the Eau Claire situation seems to be average and certainly not nearly as significant as the double digit interference suffered by a number of markets.

5. The significance of the projected interference to WQOW-TV is also diminished by the fact that WQOW-TV is a satellite of WXOW-TV and a sister station of WAOW-TV, Channel 9, Wausau, also an ABC affiliate. Shockley has pending applications before the Commission to improve the facilities of each of its stations. The

Commission's attention is respectfully directed to an amendment filed on July 2, 1996 to the application (file no. BPCT-960610) for a modification of the licensed facilities of WQOW-TV. That amendment contains an amended request for a waiver of the duopoly rules pointing out again that the Commission, at Shockley's urgings, had just reaffirmed the satellite status of WQOW-TV. Also in that waiver request is Figure 4 depicting the proposed overlap among the various Shockley stations. It should be noted that there is Grade B overlap from WXOW-TV, the parent station of WQOW-TV, and that there is also overlap of the Grade B contours of the Eau Claire station with sister station WAOQ-TV, Wausau, Wisconsin. All three of these stations are ABC affiliates with WQOW-TV being a satellite facility.

6. The overlap areas depicted in the waiver request are in the same general area as the interference showings reflected in the instant Shockley request. Since many of the people in the alleged interference areas will receive ABC service from the other Shockley stations and since WQOW-TV is a satellite service, the importance of the alleged interference becomes considerably less significant and what at first blush appears to be an average situation relating to digital to NTSC and digital to digital interference as proposed by both the Commission and the Broadcaster's Caucus, becomes a much improved situation because of the alternative, basically identical service provided to the area by the other Shockley stations.

7. Attached hereto is an Engineering Statement prepared by Neil M. Smith of Smith and Fisher, consulting engineers for WEAU-TV. As this Engineering Statement indicates, WEAU-TV does not object to a change in its digital allotment if such change

would eliminate the interference to be received by WQOW-TV, but points out that the WQOW-TV counterproposal is insufficient to establish that digital operation by WEAU-TV on Channel 39 would be a proper substitute for digital operation on Channel 16. Indeed as indicated in the attached Engineering Statement, WQOW-TV does not even specify a power level to be used on the higher channel and as a result, there is no suggestion that the use of Channel 39 will in any way replicate the present, valuable local television service provided by WEAU-TV.

8. As indicated in the attached Engineering Statement, we do not have direct access to the computer program of the Commission or of the Broadcaster's Caucus. It should be noted, however, that the Broadcaster's Caucus in proposing the allocations being questioned here, did so in spite of a specific inquiry submitted by Shockley on November 6, 1996 requesting information on alternative DTV channels to the Channel 14 allocation. This information is reflected in Attachment E3, page 17 of the Broadcaster's Caucus' Comments filed on November 22, 1996 in which, after having reviewed the matter at the request of Shockley, the Caucus continued to propose the allocation of digital Channel 16 for WEAU-TV.

9. It may be, after all of the allocations have been finalized, and our consulting engineers finally have access to the software utilized in developing the Table of Allocations, that there may be a channel which will totally replicate the WEAU-TV signal and which will cause no interference to WQOW-TV, either with its NTSC facility or its proposed digital facility. If that is true, there will be ample opportunity for Shockley to propose a modification to the Table of Allotments, making such substitutions of channels as may best serve the public interest. Until the Table is

finalized, however, there is no way this can be done. As indicated above, although there is interference, it is minor interference and the significance of it is substantially diminished by the satellite status of WQOW-TV.

WHEREFORE, the premised considered, it is respectfully requested that the Commission adopt the proposed Table of Allotments for digital television as specified in both its proposed Table and the proposed Table submitted by the Broadcaster's Caucus.

Respectfully submitted,

WEAU LICENSE, INC. (WEAU-TV)

By


Vincent A Pepper
Its Attorney

PEPPER & CORAZZINI, L.L.P.
200 Montgomery Building
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(202) 296-0600

January 27, 1997

VAP/kaw
f:\wp\1879\oppos.1

ENGINEERING STATEMENT

The engineering data contained herein have been prepared on behalf of WEAU LICENSE INC., licensee of WEAU-TV, Eau Claire, Wisconsin, in support of its Reply Comments in MM Docket No. 87-268.

In this proceeding the FCC has proposed a Table of Digital Television Allotments. WEAU-TV, on NTSC Channel 13 in Eau Claire, was allotted Digital Channel 16, and WQOW-TV, on NTSC Channel 18 in Eau Claire, was allotted Digital Channel 14. The Broadcasters' Caucus proposed the same digital allotments in its Comments. However, WQOW-TV has submitted Comments in which it argues that the digital operation of WEAU-TV on Channel 16 would cause interference to both the WQOW-TV NTSC and DTV operations and requests that WEAU-TV be allotted Digital Channel 39, instead.

Our study of the matter reveals that although there should be no appreciable interference caused by the WEAU-TV digital facility to the WQOW-TV digital facility, there would indeed be interference from the WEAU-TV digital facility to the WQOW-TV NTSC facility. Review of the Commission proposal reveals that interference was predicted, although the source of the interference was not identified.

WEAU-TV does not object to a change in its digital allotment, if such change would eliminate the interference to be received by WQOW-TV, but the WQOW-TV counterproposal is insufficient to establish that digital operation by WEAU-TV on Channel 39

would be a proper substitute for digital operation on Channel 16. Indeed, WQOW-TV does not even specify a power level to be used on the higher channel.

Without direct access to the computer program of the Commission or of the Broadcasters' Caucus, WEAU-TV cannot properly determine the facts of the matter. For example, we do not know the power level necessary to replicate NTSC service on Digital Channel 39, and whether or not the necessary power is feasible to generate at a practical cost. Considering that the allotment process is ongoing, it is entirely possible that the Commission's proposal, or that of the Broadcasters' Caucus, has already been changed in such a way as to preclude operation by WEAU-TV on Channel 39.

On this basis, WEAU-TV must oppose the proposal of WQOW-TV, unless or until the Commission provides assurance that a substitute digital channel for WEAU-TV will afford replication of the WEAU-TV NTSC service area with practicable digital power.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief.



NEIL M. SMITH

January 24, 1997

CERTIFICATE OF SERVICE

I, Kimberly Wilson, a secretary in the law firm of Pepper & Corazzini, L.L.P., do hereby certify that on this 27th day of January, 1997, I have caused to be mailed, or hand-delivered, a copy of the foregoing Opposition to Reply Comments and Request for Change of DTV Allotment for Station WEAU-TV to Avoid Interference to the following:

Roy J. Stewart, Chief *
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 314
Washington, D.C. 20554

Bruce A. Franca, Deputy Chief *
Office of Engineering and Technology
Federal Communications Commission
2000 M Street, N.W.
Room 480
Washington, D.C. 20554

R. Alan Stillwell, Economic Advisor *
Office of Engineering and Technology
Federal Communications Commission
2000 M Street, N.W.
Room 480
Washington, D.C. 20554

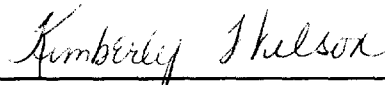
Mr. Robert Eckert *
Office of Engineering and Technology
Federal Communications Commission
2000 M Street, N.W.
Room 270
Washington, D.C. 20554

Mr. Gordon W. Godfrey *
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 566
Washington, D.C. 20554

Clay Pendarvis, Chief *
Television Branch
Video Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 702
Washington, D.C. 20554

Howard J. Braun, Esq.
Jerold L. Jacobs, Esq.
Rosenman & Colin, L.L.P.
1300 19th Street, N.W.
Suite 200
Washington, D.C. 20036

* Via Hand Delivery



Kimberly Wilson

KAW/
f:\wp\1879\oppos1.cos